

HOUSE BILL REPORT

EHB 2138

As Passed House:

March 10, 2009

Title: An act relating to the use of surplus property for the development of affordable housing.

Brief Description: Concerning the use of surplus property for the development of affordable housing.

Sponsors: Representatives Simpson and Chase.

Brief History:

Committee Activity:

Local Government & Housing: 2/18/09, 2/19/09 [DP].

Floor Activity

Passed House: 3/10/09, 59-37.

Brief Summary of Engrossed Bill

- Establishes additional regulations, procedures, and guidelines for the operation of the surplus property inventory program administered by the Department of Community, Trade and Economic Development (Department).
- Requires additional, specified governmental entities to participate in the Department's surplus property inventory program.
- Creates uniformity in the regulations and guidelines applicable to all governmental entities participating in the surplus property inventory program.

HOUSE COMMITTEE ON LOCAL GOVERNMENT & HOUSING

Majority Report: Do pass. Signed by 7 members: Representatives Simpson, Chair; Nelson, Vice Chair; Miloscia, Springer, Upthegrove, White and Williams.

Minority Report: Do not pass. Signed by 3 members: Representatives Angel, Ranking Minority Member; Cox, Assistant Ranking Minority Member; Short.

Staff: Thamas Osborn (786-7129)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

Department of Community, Trade and Economic Development's Surplus Land Inventory Program.

The Department of Community, Trade and Economic Development (Department) is required to administer a program for the statewide identification and cataloging of under-utilized, state-owned real property that is suitable for the development of affordable housing for very low-income, low-income, and moderate-income households. Specified state agencies and local governments are required to provide the Department with an inventory, subject to yearly updates, of all real property that is owned or controlled by such agencies and that is available for lease or sale. The state agencies and local governments subject to this requirement are the:

- Department of Natural Resources;
- Department of Transportation (DOT);
- Department of Social and Health Services;
- Department of Corrections;
- Department of General Administration;
- counties; and
- cities, towns, and code cities.

Although not specifically referenced in the Department's surplus lands inventory statute (RCW 43.63A.510), counties, cities, towns, and code cities are explicitly required to fully participate in the program by statutes contained in the various chapters regulating these municipalities.

As part of the Department's inventory program, each of the participating state agencies and local governments are required to provide the Department with an inventory of its eligible surplus property by November 1 of each year. The inventory must include pertinent information regarding the location, approximate size, and current zoning classification of the property. In addition, by November 1 of each year, the governmental entities must purge their real property inventories of sites that are no longer available for the development of affordable housing. The Department must then update its master inventory to reflect the inventory changes reported by the governmental entities.

Upon written request, the Department is required to provide a copy of the inventory of state-owned and publicly owned real property to parties interested in developing the sites for affordable housing.

"Affordable housing" is defined as residential housing that is rented or owned by a person who qualifies as a very low-income, low-income, or moderate-income household, or who is from a special needs population, and whose monthly housing costs, including utilities other than telephone, do not exceed 30 percent of the household's monthly income.

Disposition of Surplus Housing by the Department of Transportation.

The DOT is required to sell or dispose of surplus properties in accordance with specified statutory procedures and policies. The DOT is granted broad discretionary authority in

selling surplus property, provided the property is no longer needed for transportation purposes and it is in the best interests of the public for it to be sold. With respect to surplus property that is suitable for residential use, the DOT is explicitly authorized to sell surplus property to eligible nonprofit organizations dedicated to the development of affordable housing for very low-income, low-income, and moderate-income households.

The DOT is also required to participate in the Department's program for inventorying surplus property that is suitable for the development of affordable housing. Accordingly, the DOT must provide the Department with an inventory of its eligible surplus property by November 1 of each year. The inventory must include pertinent information regarding the location, approximate size, and current zoning classification of the property.

Sale or Disposition of Surplus Land by Governmental Entities Not Required to Participate in Department's Surplus Land Inventory.

Most state and local governmental entities that are authorized to own, control, or administer real property are subject to some form of statutory regulation regarding the sale, disposition, or administration of such property. Most of these governmental entities, however, are not required to participate in the Department's surplus property inventory, nor are they subject to statutory provisions requiring that they consider the development of affordable housing when disposing of surplus property. The Parks and Recreation Commission, port districts (ports), public utility districts (PUDs), and water-sewer districts are among the governmental entities that are not participants in the inventory or are otherwise directed to consider affordable housing uses when selling surplus property.

Summary of Engrossed Bill:

Governmental Entities Added to the Surplus Property Inventory Program.

The State Parks and Recreation Commission is added to those state agencies required to participate in the Department's surplus lands inventory program. In addition, counties, cities, towns, and code cities are added to the Department's statutory listing of the governmental entities required to participate in the program. This constitutes a technical clarification of the Department's statute since these entities are already subject to other statutes requiring such participation.

New Regulations, Procedures, and Guidelines Added to the Requirements of the Surplus Property Inventory Program.

This act provides additional regulations, procedures, and guidelines for the operation of the Department's surplus property inventory program. In addition, the act creates uniformity in the regulations and guidelines applicable to all participating governmental entities.

Each inventory submitted to the Department by a participating governmental entity must contain descriptive information about each property that includes, if known, the contact information for the property and the location, approximate size, sale or lease price and terms, and current zoning classification of the property. Each inventory must be updated at least

once a year, and printed and electronic copies of each inventory must be provided upon request.

Surplus property for sale by the participating governmental entities, and which is suitable for the development of affordable housing, must be offered for at least the first 180 days after its availability for sale, exclusively to eligible organizations, for the purpose of developing affordable housing. Eligible organizations have the right of first opportunity to purchase these surplus properties, under reasonable option and purchase conditions, in return for a commitment to provide affordable housing for at least 30 years.

A governmental entity that sells real property to an eligible entity may do so at a price that is less than fair market value, provided that the affordable housing developed on the property is occupied solely by individuals or families who are very-low or low-income.

"Eligible organization" means any city, town, or county government, local housing authority, public development authority, community renewal agency, regional support network established under chapter 71.24 RCW, nonprofit community or neighborhood-based organization, federally recognized Indian tribe in Washington, or regional or statewide nonprofit housing assistance organization, each having experience in the development of affordable housing.

"Real property" means land, buildings, or buildings and land.

Participating governmental entities have the sole authority to determine: (1) whether or not property is surplus; (2) whether or not the property is suitable for the development of affordable housing for very low-income and low-income persons or families; and (3) what constitutes reasonable option and purchase conditions.

Each participating governmental entity must develop the criteria and procedures necessary for inventorying surplus property and offering it for sale to eligible organizations.

The Department must present a written report to the appropriate committees of the Legislature by December 1 of each year regarding the status of the surplus property inventory program, and which must include a comprehensive listing of all real property subject to the inventory during the preceding year.

Appropriation: None.

Fiscal Note: Requested on February 16, 2009.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This is a good bill that will assist the developers of affordable housing to locate and purchase suitable building sites. The bill would dramatically expand access to, and the availability of, land for affordable housing. One noteworthy feature of the bill is that it

would provide public entities with the option of selling property for less than fair market value if it is to be used for housing low-income and very low-income families.

(With concerns) The bill creates problems and conflicts for port districts. Its requirements would make it difficult for ports to complete land transactions it needs to pursue for port purposes. Most of the property owned by ports is not suitable for housing. The provisions allowing sale of property for less than fair market value present problematic constitutional issues.

(Opposed) The bill creates problems and conflicts for port districts. Its requirements would make it difficult for ports to complete land transactions it needs to pursue for port purposes. Most of the property owned by ports is not suitable for housing. The provisions allowing sale of property for less than fair market value present problematic constitutional issues.

Persons Testifying: (In support) Representative Simpson, prime sponsor; Kim Herman, Housing Finance Commission; Nick Federici, Washington Low-Income Housing Alliance; and Maggie Nelson, People's Kitchen of Olympia Project.

(With concerns) Eric Johnson, Washington Public Ports; Sean Eagon, Port of Tacoma; and Dave Williams, Association of Washington Cities.

(Opposed) Evelyn Arnold, Washington Association of County Auditors.

Persons Signed In To Testify But Not Testifying: Fred Romero, Washington State Parks and Recreation.